

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Various locations in California)

SEARS, ROEBUCK & COMPANY¹

Employer

and

Case 32-RC-5087

MACHINISTS DISTRICT LODGE NO. 190
OF NORTHERN CALIFORNIA, MACHINISTS
DISTRICT LODGE NO. 93, AND MACHINISTS
AND MECHANICS LODGE NO. 653

Joint Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly being filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.⁴

2. The parties stipulated, and I find, that the Employer, a New York corporation, with its corporate headquarters and principal place of business located in the State of Illinois, has been engaged in the business of operating district service operations located in Northern California. During the last twelve months immediately preceding the hearing, in the course and conduct of its business operations, the Employer purchased and

¹ The name of the Employer appears as stated at the hearing.

² The names of the Joint Petitioner appear as stipulated at the hearing.

³ The parties' briefs were considered.

⁴ In its post-hearing brief and in a letter dated December 1, 2002, the Joint Petitioner requested that the Employer's post-hearing brief be stricken in its entirety because it "relies" upon prior Regional Director decisions involving the Employer. However, Joint Petitioner cites no authority for striking a brief simply because it cites prior Regional Director decisions. It also fails to explain its contention that it would be a denial of due process and the Administrative Procedures Act for the Region to consider these decisions. Accordingly, Joint Petitioner's request to strike the Employer's brief is denied.

received, at its Mid-Cal Metro District service operations, goods and materials valued in excess of \$50,000 directly from points located outside the State of California, and has had gross annual revenues in excess of \$500,000. Based on the foregoing, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

3. The parties stipulated and I find that the Joint Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Joint Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Joint Petitioner seeks to represent all full-time and part-time service technicians in the Mid-Cal Metro District, including “A&E technicians” and technicians working at the Employer’s San Leandro, California outlet facility. Contrary to the Joint Petitioner, the Employer would not limit the unit to only full-time and part-time service technicians in the Mid-Cal Metro District. Instead, the Employer contends that the unit should consist of all full-time and part-time service technicians *and* “support associates” in the district,⁵ which includes truck stock specialists, fleet coordinators, parts pros, customer relations support specialists, audit cashiers, shipper/receivers, shuttle drivers, parts sales associates, and timekeepers. For the reasons set forth below, I find that an appropriate unit consists of all full-time and regular part-time service technicians, A&E technicians, and support associates in the Mid-Cal Metro District, excluding the timekeepers and human resource assistants.

I. FACTS

The Mid-Cal Metro District (herein called the Mid-Cal District) is one of many product service districts operated by the Employer nationwide providing in-home and in-shop repair services for customer-owned merchandise. The Mid-Cal District employees are divided into two groups, service technicians and support associates. Support associates are further divided into specific job classifications based upon their primary job responsibilities and they all have some job responsibilities that assist technicians in providing repair services. The vast majority of service calls in the Mid-Cal District are performed at the customers’ homes by service technicians. In performing their tasks, service technicians are supported by support associates located throughout the Mid-Cal District. Customers can also bring their merchandise to one of the Employer’s product service facilities in the district for repairs. The in-shop repairs are performed by service technicians who are routed to a product service facility or the repair work is shipped-out

⁵ At the hearing, the parties generally referred to the support staff as “support associates” and occasionally as “support specialists”. I will, therefore, generally refer to them as “support associates”.

to an Employer facility located outside the district.⁶ The Employer also sells parts, merchandise, and protection agreements for the Employer's merchandise at its product service facilities. Service technicians also sell protection agreements when they perform repairs at a customer's home.

The Mid-Cal District covers portions of Central and Northern California and it consists of one headquarters facility in Fresno, nine branch offices throughout the district, an outlet facility in San Leandro, and an office in Salinas. The branch offices are located in Concord, San Jose, Hayward, Bakersfield, Hanford, San Luis Obispo, Mountain View, San Bruno, and Santa Maria, California.⁷ The Fresno, Concord, Bakersfield, San Jose, and Santa Maria branches offices are all free standing facilities while the rest of the branch offices are attached to an Employer's retail store.⁸ The branch offices, including the Fresno facility, all have a sales floor, where over-the-counter parts and some merchandise are sold, and an area for customers to return merchandise for repair. The larger locations also have a training area, a shipping and receiving area, and/or other work and break areas for the Mid-Cal District employees. The type of merchandise sold at these locations depends on the size of the particular facility. Thus, large facilities, like Bakersfield, sell electronic merchandise and accessories, lawn and garden products, and hand tools -- while the Hanford branch, a smaller facility, only sells impulse items such as batteries and detergent. All of the facilities, however, except Hanford, sell camcorders, televisions and impulse items.⁹

The San Leandro outlet facility operates as an in-shop repair office staffed by service technicians who are assigned to that location. The Salinas office is used by service technicians to pick up and drop off parts and supplies. It is also used by one technician manager as his office.

There is no collective bargaining history at any of the facilities in the Mid-Cal District except at the Fresno and Hanford facilities. The record disclosed that service technicians and support associates (with different job titles than currently utilized by the Employer) were part of a multi-location unit consisting of the Fresno and Hanford facilities and a third facility in Visalia, California. The multi-location unit was represented by another labor organization for about ten years but the collective bargaining relationship ended in the early 1990's.

⁶ The parties stipulated that any unit found appropriate herein be limited to employees of the Mid-Cal District. Therefore, there is no contention that service technicians who are located outside the district, but who perform repair services for customers inside the district, should be included in the petitioned-for unit.

⁷ Prior to July 2002, the Mid-Cal District was comprised of three separate service districts with "hub" branches located in Concord, San Jose and Fresno, California. Most of the routing and administrative functions for the three districts were handled in each of the hub branch offices. In July 2002, the Mid-Cal District was created when the three service districts were consolidated into a single district, and all of the human resources functions were transferred to the Concord branch and most of the support functions were transferred to the Fresno branch, which became the Mid-Cal District headquarters.

⁸ The Hanford facility is located in the parking lot of an Employer's retail store. The record did not establish the type of facility found at San Luis Obispo branch.

⁹ The approximate distances between the Concord facility and some of other district facilities are as follows: Fresno (180 miles), San Luis Obispo (200 miles), Santa Maria (180 miles), Mountain View (30 miles), San Bruno (25 miles), Hanford (180 miles), and Bakersfield (200 miles).

Centralized Operations

The Mid-Cal District is headed by Orsey Hendrix, the district manager, who is responsible for the entire operation and workforce in the district, including service technicians, support associates, and managers. Among other things, he determines the budgets and the hours of operation for each of the facilities in the district, and he is responsible for approving all discharges of employees in the district and for reviewing all employee performance evaluations.¹⁰ Hendrix oversees each of the operations with the assistance of the district operations manager (Michael Herman), the district human resources manager (Sharon Giampapa), and the district technician manager (Marcus Alley), each of whom report directly to him.

The district technician manager supervises 15 technician managers who in turn supervise the approximately 314 service technicians in the district. The district operations manager is responsible for the district's profits and losses. He is also responsible for the approximately 119 support associates throughout the district, including the parts sales associates. In this regard, the district operations manager directly supervises the support manager who is responsible for all support staff at the Fresno facility and at the branch offices. The support manager, who is based in Fresno, also supervises the six sales managers who are responsible for supervising the support associates at the nine branch offices. Finally, the human resources manager supervises two human resources assistants and two timekeepers who work with her at the Concord branch office. The human resources office handles all personnel matters arising in the Mid-Cal District, and copies of all personnel files are kept in this office.¹¹

The human resources manager visits the other branches three days per week to make herself available to meet the branch employees, including the service technicians, and to conduct employee meetings, new employee orientation, and/or employee training sessions. She also contacts employees by telephone and facsimile communication. The human resources manager oversees all employee recruitment, hiring, new employee orientation, leaves of absence, attendance, benefit administration, and other related personnel issues for all of the facilities in the Mid-Cal District. She is also involved in setting the wage rate for employees in the district and she is involved in all disciplinary, layoff, and evaluation decisions in the district.

The operations manager is based at the Fresno facility but he travels to the branch offices throughout the district two or three days per week. The district technician manager is located at the Fresno facility but the 15 technician managers under him are stationed at all of the branch offices, except the smaller branch offices in Mountain View,

¹⁰ Hendrix has final authority to approve discharges of employees who have worked for the Employer ten years or fewer. Approval must be obtained from an Employer regional manager (Hendrix's immediate supervisor) if the Mid-Cal District wants to discharge an employee who has worked for the Employer for over ten years.

¹¹ The parties stipulated that all of the aforementioned managers, including the technical managers, the support manager, and the six branch sales managers, should be excluded from any unit found appropriate as statutory supervisors.

San Bruno and San Luis Obispo. However, each of these three branches is assigned a technician manager who is available by telephone to assist the service technicians servicing those areas.¹² The six sales managers are stationed at most of the branch offices, including the Fresno facility, and some of them are responsible for supervising two or more of the nine branch offices. The sales managers who supervise more than one branch office travel to each of their branches on an “as needed” basis. In some branches, sales managers and technician managers share responsibility for supervising all branch employees whenever the other manager is away from the branch office. For example, in the Bakersfield, Santa Maria and San Luis Obispo branches, the technician manager and sales manager supervise the part sales associates *and* the service technicians whenever the other manager is on vacation, personal leave, or traveling on business.

All service technicians and support associates receive the same employee handbook and new employee orientation packet and they are generally subject to the same policies and procedures, with some variations based on the particular job functions associated with the various job classifications. Thus, the same attendance policy applies to all service technicians and support associates in the district. Support staff and service technicians are paid every two weeks on the same day, and they all have the option of picking up their paychecks at their district branch office or they can receive their paycheck by direct deposit.¹³

All Mid-Cal District employees, including technicians, share the same health care benefits, disability and survivor benefits, stock purchase plan, work and family benefits, and retirement benefits. The same progressive disciplinary system applies to all district employees and the same disciplinary form is used to discipline all employees. The same performance review form is used to evaluate the performance of technicians and support associates, except technicians are also evaluated by some additional factors that relate to their job functions. During the year, technicians and support associates are required to attend employee meetings in order to discuss new company policies or procedures or to discuss the district’s performance. Service technicians and support associates sometimes attend these meetings together and other times they attend separately, but they all receive the same information regardless of who attends these meetings.

Service Technicians

As noted, service technicians diagnose and repair customer-owned appliances and other merchandise at the customer’s home or at a branch office. The record did not establish how often technicians are routed to branch offices to perform in-shop repairs, but the vast majority of repairs are performed at the customer’s home. These technicians are classified as “in-home service technicians”. In addition to the in-home service technicians, five technicians are permanently assigned to repair appliances at the

¹² A technical manager is also stationed at the Employer’s Salinas office. The San Leandro outlet facility is supervised by the technical manager stationed at the Hayward branch office.

¹³ Most technicians and support associates work Monday through Friday but some work on weekends. Most technicians and support associates work full-time, but some work part-time. Technicians and parts sales associates are also called upon to work overtime.

Employer's San Leandro outlet facility. On occasion, the San Leandro technicians are also called upon to assist other technicians at a customer's home. Almost all in-home service technicians begin their routes from their homes each morning. Only about 15 to 20 in-home service technicians, throughout the Mid-Cal District, begin their workday at the branch office where they pickup their company truck to begin their service calls.¹⁴

Service technicians are classified by three different levels, "technician 2", technician 3", and "technician 4." The "technician 2" category is considered the entry level and standard level classification. Some technicians specialize in the kind of appliances they work on while others are considered "generalists" who can work on a variety of appliances, such as washers, dryers, refrigeration appliances, and cooking appliances.¹⁵ Service technicians in the "technician 2" category are competent to work on all appliances except sealed systems like big screen televisions and compressors. They qualify for the "technician 3" classification when they obtain the skills to work on sealed systems. The Employer no longer uses the "technician 4" classification because the work they previously performed (repairing alarms and store registers) is now out-sourced by the Employer.¹⁶

Prior experience or a background in repair and technical work is not a requirement for the entry level service technician position and the Employer has hired technicians with no prior experience. Entry level technicians receive training by either riding along with one of the home service technician or by working with a service technician at one of the Mid-Cal District facilities, such as at the San Leandro outlet facility. The new technicians ride along with an experienced technician 4 to 12 weeks until they are ready to go out on their own routes. The length of time they ride along with an experienced technician depends on their prior knowledge or background in appliance repair, if any.

All in-home service technicians are issued handheld computers, commonly referred to as "HHTs", that allow communication between the service technicians and support associates. They are also issued cellular telephones to communicate with technician managers, support associates, vendors, and customers. Before turning on their HHTs, service technicians must download their routes for the day onto the HHT. The routes are transmitted to the service technicians' HHTs by way of a modem from the Employer's central server in Ohio. After they download their HHTs, they can turn on their HHT and review their routes for the day. Service technicians then proceed to their first service call. All service technicians start their workday when they turn-on their HHTs regardless of whether they park their truck at home or at a branch office.¹⁷

¹⁴ During the hearing, the parties described the vehicles used by the service technicians as "trucks" and occasionally described them as "vans". I will, therefore, refer to them as trucks.

¹⁵ There are also approximately 30 "A & E technicians" who repair non-Employer-made products, like Whirlpool products. The parties stipulated that A & E technicians should be included in any unit herein found appropriate.

¹⁶ There are only about 4 or 5 service technicians who retain the "technician 4" classification because they attained that classification before the Employer ceased using it.

¹⁷ The technicians' daily routes are initiated when customers call-in to place their orders for a service call. These service orders are downloaded to a computer which then assigns those service calls to a particular

In-home service technicians make service calls using Employer supplied trucks, tools, and parts. Most service calls requiring new parts are done using parts that are carried in the technician's truck. Only about 14 to 16 percent of the service calls in the district require parts that are not stocked in the technicians' trucks. Technicians input the parts numbers into the HHTs for all parts they use to service a customer call in order to get their truck stock replenished. When technicians do not carry the required part in their trucks, they order it by entering the information into the HHT and schedule a return appointment by entering that information into the HHT. The ordered-part is subsequently sent directly to the customer from a vendor or an Employer warehouse located outside the Mid-Cal District. Parts that are too big or contain potentially hazardous materials are sent to the district facility where the service technician picks them up before returning to the customer's home to finish the repair. Approximately 13.4 percent of the parts that are ordered to finish a service call are shipped to the district facilities rather than directly to the customers' homes.¹⁸

Upon completing a service call, technicians input information into their HHTs representing the amount of money received from the customer.¹⁹ They return to their service trucks, check the mileage on their truck and input that information into the HHT. They then turn off the HHT which signifies the end of their work day. When they return home, they plug-in their HHTs into a phone line and upload all of the information that they entered into the HHT throughout the day. It takes about one or two minutes to upload the information.

Except for the technicians who pick-up their trucks at the district facility, service technicians do not visit their assigned district facility on a daily basis. Conflicting evidence was presented with respect to the frequency that service technicians visit their district office. For example, there was testimony that 10 to 15 technicians visit the Fresno facility on a daily basis. Conversely, two service technicians from the Concord and Hayward branches testified that they each visit their respective facility approximately once or twice per week to dispose of trash, return used parts, pick-up supplies, attend employee meetings, talk to the technician manager, and/or to use the bathroom.²⁰ However, the testimony by the two service technicians does not establish how often other technicians visit their respective branch offices.

technician. Routing assignments are based on the customers' proximity to the service technician and whether the service call requires a particular specialization by the service technician. The computer generated routes are then reviewed by "route specialists" located in Sacramento, California, who can modify the routes if they determine that a more efficient route is required. The parties agree that the route specialists should not be included in any unit found appropriate.

¹⁸ Technicians are also required to go to the district facility to return used parts and dispose of trash they generated during their service calls.

¹⁹ The next day, service technicians mail two self-addressed envelopes to the Fresno facility. The envelopes contain the checks and cash received from customers and the receipts and audit material generated by the technicians during the service calls the previous day.

²⁰ They also testified that they have been instructed by the Employer that service technicians should avoid visiting their branch offices. However, the record establishes that they were told not to waste time visiting their respective branches if they are not performing a service-related function.

Service technicians generally have no in-person contact with each other unless they pass each other while driving their routes. Some technicians call each other for advice or to request assistance while on a service call but the record did not establish how often this occurs. One technician testified that he gets two or three calls per week from other technicians asking for advice. Another technician testified that he talks to other technicians approximately four times per day regarding assistance or advice. Both of these technicians are among the most experienced technicians in the Mid-Cal District which could account for the daily contact they have with some technicians in their branch area. Both technicians also testified that technicians have been directed to contact a technician manager whenever they have any questions or problems. Thus, despite the daily contact that these two technicians have with some other technicians, it is evident that the Employer's service operation is set up so that service technicians do not generally come into contact with each other except when they visit the branch offices at the same time.

Parts Pros

There are six "parts pros" in the district. They all work at the Fresno facility and are responsible for helping service technicians determine what parts are needed to finish a repair and to help technicians locate difficult to obtain parts and parts that are needed on an emergency basis. Parts pros have the authority to purchase parts for technicians, using their Employer issued credit cards, when they locate a difficult to find part. Part pros also occasionally visit local vendors to purchase these parts.

When service technicians have inquiries relating to parts, they have the option of calling the parts pros, technician managers, or the Sears Technical Assistance Center (a facility maintained by the Employer in Texas for researching parts issues on a nationwide basis). The record did not establish how often parts pros receive calls from technicians asking for this kind of assistance. According to one experienced technician, he has only had to call the parts pros two or three times in the past six months. Another experienced technician called part pros more than ten times during the past year, but has not called them since the Mid-Cal District was consolidated in July 2002. This testimony does not establish how frequently other technicians in the district contact parts pros. Nevertheless, the record establishes that the primary duty of the parts pros is to research parts issues for service technicians.

Parts pros also receive parts inquiries from "customer relations support specialists" who need to know the status of an ordered part that a customer has yet to receive. According to one customer service representative, she contacts parts pros 7 to 8 times per day regarding these kind of inquiries. Parts pros have the authority to cancel a service call if they determine that the ordered part is not going to arrive on the scheduled date or if it cannot be located. Parts pros also assist parts sales associates locate parts when the sales associates are unable to find a part in their respective district facility.

Customer Relations Support Specialists

There are 23 “Customer relations support specialists” (herein referred to as customer relations specialists) in the district, stationed at the Fresno facility. They are responsible for handling all customer inquiries and complaints relating to home service calls and merchandise that was returned to one of the district offices for repair. Each customer relations specialist receives approximately 50 to 75 telephone calls from customers each day. Most calls are inquiries about when the service technicians are going to arrive at their homes. Customer relations specialists respond to these type of inquiries by sending an HHT message to the service technicians requesting that they call the customer with an estimated time of arrival. If a customer calls with a complaint or concern about a service technician or service call, the customer relations specialists are required to fill out a “customer resolution form” reflecting the nature of the concern or complaint, the identity of the technician involved, and the status of the complaint if the customer relations specialist is unable to resolve it. A copy of this form is sent to the support manager, technician manager, and district support manager.²¹

Each customer relation specialist receives about 3 or 4 telephone calls per day from service technicians asking, for example; to check on the prior repair history of a particular appliance; to verify there is a protection agreement still in effect for a particular appliance; or to get a “service order” for an unscheduled appliance repair that the service technician added to a service call. Customer relations specialists are generally able to answer these kind of questions while still on the telephone with the technicians but occasionally need to call the technicians back. The Employer recently set up a telephone line dedicated exclusively for service technicians to call customer service specialists.

Each customer relations specialist also telephones service technicians approximately 10 to 12 times per day. However, the vast majority of communication between customer relations specialists and technicians is done by customer relations specialists sending HHT messages to technicians. Most of these messages are prompted by customer inquiries about when the service technician is going to show up and the technician is asked to telephone the customer with a response. Customer relations specialists also send HHT messages to technicians to inform them that a service call has been rescheduled or to ask the technician to telephone a customer relations specialists to clear up some issue. For example, a service technician may have placed a parts order that does not correspond to the kind of repair they were making. Therefore, the customer relations specialist needs to talk to the technician to make sure the correct part is ordered.

Customer relations specialists also communicate with other support staff in order to answer inquiries from customers and service technicians. In this regard, they ask parts pros to track down the status of parts that have not yet been received by customers. Customer relations specialists contact parts pros by telephone, a hard copy message, or in person depending on the urgency of the inquiry. They have these kinds of

²¹ Customer relations specialists also telephone customers, the day before a scheduled service call, to determine if the customer has received the part necessary for the technicians to service the customer’s appliance. If the part has not been received, the customer relations specialist reschedules the service call.

communications with parts pros about 7 or 8 times per day. They also work with audit cashiers to resolve customer billing inquiries and refund issues, and they occasionally go to the sales floor or to the shipping/receiving area to determine if a part is in stock in order to answer a customer's inquiry.

Truck Stock Specialists

There are three truck stock specialists in the Mid-Cal District, all based at the Fresno facility.²² They are responsible for inventorying the service technicians' service trucks once per year and for managing the truck stock inventory on a daily basis. A primary inventory of parts, set by Employer policy on a district level, is maintained in each service truck. However, the primary inventory of each service truck can vary somewhat depending on the level of usage of particular parts by each technician. In this regard, the truck stock specialists review truck stock replenishment reports on a daily basis to determine which parts should be carried on each service truck based on the usage figures. In making this decision, the truck stock specialists consult with the service technicians regarding the need to add or delete a certain parts from the truck inventory. They also communicate with technicians when supplying them with "service flashes" (repair kits for recalled products).²³

Truck stock specialists also conduct an annual inventory of the parts stocked in all of the service trucks in the district. These inventories have been conducted at the Fresno facility but the Employer will soon be conducting some of the inventories at branch offices. The exact date when inventories will begin to be conducted at branch offices and the number of inventories to be performed at the branch offices are not disclosed in the record. However, approximately 300 service trucks are inventoried each year at the Fresno facility. The annual inventory requires the service technician to assist the truck stock specialist to conduct the inventory. This process takes up most of the day to complete.

Fleet Coordinators

There is one fleet coordinator in San Jose and another one in Concord. They are responsible for maintaining, repairing, and supplying HHTs and related accessories to the technicians as well as troubleshooting any problems that arise with the HHTs. Fleet coordinators help technicians who call in with questions regarding the operation of their HHTs. Fleet coordinators are also responsible for replacing damaged or broken technicians' tools and cellular telephones, and they have some responsibility for setting

²² Steve Vierra, a "fleet coordinator" at the San Jose facility, recently began performing truck stock specialist duties among his other job functions. The record established that the Employer recently added some truck stock specialists at a couple of its branch offices, but the record did not establish how many truck stock specialists or which specific branches were involved, except for Steve Vierra in San Jose.

²³ Parts that are used to replenish the stock in the technicians' service trucks are ordered automatically when technicians input information into their HHTs regarding the parts they used during service calls. Parts that are used to replenish the stock in service trucks are shipped directly to the technicians' homes. Therefore, there is no contact between truck stock specialists and technicians with respect to replenished parts.

up the servicing and repair of service trucks. The two individuals currently holding the fleet coordinator positions, Steve Vierra and Ed Poggensee, are former service technicians with extensive experience as technicians. Because of their extensive experience, they are occasionally called upon to assist technicians with complicated service calls at the customers' homes. The record did not disclose if this is part of their job duties as fleet coordinators.²⁴

Audit Cashiers

There are seven audit cashiers in the Fresno facility. One of their primary responsibilities is to audit the envelopes mailed in by the service technicians each day, containing the previous day's receipts and cash, and compare them with the electronic information stored in the HHTs.²⁵ They accomplish these tasks by reviewing "Individual Technician And Register Over And Short History Reports" that lists discrepancies in the amounts contained in the envelopes with the figures entered by the technicians in the HHTs. Audit cashiers are responsible for clearing up these discrepancies and, if necessary, contacting the responsible technicians for an explanation of the discrepancies. fifty percent of the time, audit cashiers are able to reconcile the discrepancies without contacting technicians. The rest of time, they send HHT messages to technicians requesting an explanation for the discrepancy or ask the technicians to telephone them. If after an hour they receive no response from the technician, they request permission from the support manager or from one of the leads to telephone the technicians on their cellular telephone. The support manager receives about ten requests to telephone technicians each day from the audit cashiers and she generally approves all of the requests. The record did not establish how often the audit cashiers go to the leads for permission to call technicians.

Audit cashiers also monitor "reprocessing reports" that list all apparent discrepancies or errors recorded in the technicians' HHTs with respect to such things as the service order, parts numbers, and truck mileage. Again, the audit cashiers try to resolve these discrepancies or errors on their own before contacting service technicians for an explanation and, if necessary, they request permission from the support manager or one of the leads to telephone the technicians.

²⁴ Poggensee was recently a temporary technician manager while the Employer attempted to fill an open technician manager position. However, that position has now been filled and Poggensee was scheduled to return to his fleet coordinator duties within one week of the hearing date. The record did not disclose what authority or responsibilities he had during his tenure as a temporary technician manager, and neither party has asserted that he is a statutory supervisor by virtue of his role as a technician manager. In its brief, the Joint Petitioner simply notes that Poggensee "appears to have been promoted to a technical manager position recently." Absent evidence that Poggensee possesses any indicia of a statutory supervisor, I shall include him in the unit.

²⁵ Audit cashiers also reconcile the sales records from the branch offices and other facilities in the district.

Part Sales Associates

There are about 63 parts sales associates at the nine branch offices, including the Fresno facility. Their primary responsibility is to assist customers at the front counter. In addition to ringing up sales for a customer, they also receive merchandise from customers that need to be repaired. Parts sales associates prepare a repair tag for this merchandise with a description of the problem that needs repair. After tagging the merchandise, they take it to a back office or to the shipping/receiving area, if there is one, and prepare the merchandise for shipping to one of two Employer repair facilities outside the Mid-Cal District.²⁶

Service technicians occasionally need to return unused parts or merchandise they are unable to repair to the district facilities. On these occasions, the service technicians can present these items to a parts sales associates or they can simply leave the items in a bin that is designated for items returned by technicians. The parts sales associates prepare the returned items for shipping along with the required paperwork. They then enter information regarding the returned items into the computer. The returned merchandise is then shipped to the Employer's repair facilities outside the district and the returned parts are shipped to the Fresno facility for further processing.

Shuttle Drivers

Two shuttle drivers operate out of the Fresno facility and a third driver operates out of San Jose. They deliver and pick up parts for districts branches approximately three times per day. They also deliver supplies to branch offices that are also used by the service technicians in the area. While delivering parts and supplies to the branches, the shuttle drivers also pick up unused parts and returned merchandise for delivery to the Fresno facility. The San Jose driver delivers and picks up parts and supplies for the Mountain View, San Bruno, Hayward and Concord facilities. He takes the return items back to the San Jose facility. The Fresno drivers pick up and deliver parts and supplies for the San Jose facility, including return items that have been sent to that facility. The Fresno shuttle drivers also deliver and pick up parts and supplies from the other branches in the Southern part of the district. The shuttle drivers use one large truck and two vans to make their deliveries.

Shuttle drivers also perform shipping and receiving functions and assist on the parts sales floor at their respective branch office when they are not shuttling parts and supplies to the branch offices.

²⁶ Parts sales associates also stock merchandise on the sales floor and they assist shipping and receiving employees in the locations that have a shipping and receiving department. In this regard, they help receive merchandise when trucks arrive, help package merchandise that is going to be shipped out, and file paperwork.

Shipping and Receiving Associates

There are twelve shipping and receiving associates in the Mid-Cal District, seven are stationed at the Fresno facility, three are at the Concord facility, and two are at the San Jose facility. The shipping and receiving associates at the Fresno facility receive and ship parts, supplies, and merchandise throughout the Mid-Cal District. They also receive and process parts and merchandise that technicians have returned to the branches. The bulk of the parts and merchandise they send to branch facilities are products to be sold on the sale floor of the branch facilities. Occasionally, parts are shipped directly to customers' homes so that technicians can perform service calls, however, the record simply established that these shipments account for a "minority" of the shipments from the Fresno facility.

The shipping and receiving associates at the Concord and San Jose branches receive parts, merchandise, and supplies from the Fresno facility and ship returned parts and merchandise to the Fresno facility. All the shipping and receiving associates in the district also work on the sales floor of their respective branch facility when the parts sales associates are busy and need their assistance. In addition, one of the shipping and receiving associates at the San Jose facility also performs shuttling duties at least two days per week.

Timekeepers/Human Resources Assistants

The human resources manager is responsible for all personnel matters in the district. She has four assistants who work at the Concord facility. Two of the assistants, Barbara Fuller and Toni Serrio, function as timekeepers for the entire district and they are occasionally assisted by Diane Amrhein and Annabelle Gutierrez, the other human resources assistants in the office. Among other things, the human resources assistants are called upon to investigate inquiries by employee regarding their paychecks. Approximately, 30 to 40 percent of the assistants' time is spent resolving these kind of issues. The record does not establish how often the human resources assistants come into contact with other district employees in the normal course of their work day. However, most of their time is spent in the human resource office answering telephone calls from employees throughout the district, working on the computer, and maintaining personnel files.

All four assistants have access to the personnel files kept in the human resources office, including workers compensation records, disciplinary notices, disability claims, payroll registers, and leaves of absence reports. The human resources assistants also occasionally gather information for the human resources manager to aid her in making decisions regarding leaves of absence and wage increases. They also occasionally attend meetings involving the human resources manager and other managers but the record does not disclose what role, if any, the assistants or the human resources manager played in the meeting.

Interrelation And Community of Interest Among The Mid-Cal District Employees

Prior experience is not a requirement for any of the entry level service technician or support staff positions. Thus, all technicians and support associates are given the same pre-employment screening examination, although technicians are also given a basic electricity examination and perhaps another examination if they are seeking a specialized position. Unlike support associates, service technicians receive training on an intermittent basis. However, all district employees are offered correspondence courses for technical and non-technical subjects, and support associates are eligible to take the technical courses since they can transfer to a technician position.

Openings for all support associate positions and service technician positions in the Mid-Cal District are posted at all of the district branches and all employees are eligible to apply for any position. Since 1996, at least seven support associates have transferred to service technician positions and at least three service technicians transferred to support associate positions. The Employer also maintains a "light duty" program that allows support associates and service technicians who suffer on-the-job injuries to continue working in a modified support service assignment. Since January 2000, fourteen service technicians were given light duty assignments as parts sales associates, customer service representatives, and routing office employees.

Support associates at the Fresno facility and at the branch offices are cross trained to assist one another. Thus, shuttle drivers perform shipping/receiving functions and work on the sales floor of branch offices whenever the need arises. Shipping and receiving associates also assist parts sales associates on the sales floor when they are busy. In addition, one of the shipping and receiving associates at the San Jose facility drives a shuttle van at least two days per week. Parts pros assist parts sales associates to locate parts when the sales associates are unable to find a part in their respective district facility. In the facilities with a shipping/receiving department, parts sales associates assist shipping and receiving associates in performing their tasks. At the Fresno facility, parts sales associates and audit cashiers assist customer relations specialists whenever they are busy and need help. The audit cashiers also work on the sales floor when needed. On at least one occasion, a service technician assisted parts sales associates by operating the cash register to transact sales for customers. Finally, all of the district branches take annual physical inventories of all their parts stock. The inventory process takes about two weeks to accomplish. The Employer uses any employee it can spare to help in the inventory process. Thus, service technicians, shipping and receiving associates, parts pros, and technician managers participated in recent inventories.

The record establishes that service technicians are generally paid higher wages than the support staff. The average wage rate for service technicians is \$20 per hour and the average pay for parts sales associates is \$13 per hour.²⁷ Service technicians and parts

²⁷ The record did not disclose if the other support associates earn similar wage rates as the parts sales associates. There was some testimony that: the highest wage rate for parts pros is \$16 per hour; some

sales associates also receive a flat commission (between 6 and 10 percent) for selling protection agreements on merchandise they sell or repair. Their annual performance evaluations are based, in part, on their rate of success in selling these protection agreements. They are the only employees who earn commission. However, the Employer intermittently runs contests based on the volume of sales by the technicians and parts sales associates and all support associates, except audit cashiers, are eligible to share in the reward if they are teamed up with technicians.²⁸

II. ANALYSIS

Under Section 9(b) of the Act, the Board has broad discretion to determine “the unit appropriate for the purposes of collective bargaining” in each case “in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act.” *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494-497 (1985). The Board has the discretion to select an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit. *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). The Joint Petitioner contends that a unit consisting of only the service technicians in the Mid-Cal District is an appropriate unit. The Employer asserts that a unit consisting of the service technicians must also contain the support associates in the Mid-Cal District. The scope of the unit sought by the petitioner is relevant but cannot be determinative of the unit. *Metropolitan Life Insurance Co.*, 156 NLRB 1408, 1418 (1966); *Airco, Inc.*, 273 NLRB 348 (1984).

In determining what constitutes an appropriate unit, the key question is whether the employees share a sufficient community of interest. *Alois Box Co., Inc.*, 326 NLRB 1177 (1998); *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994). In making this determination, the Board weighs a variety of factors, including (1) integration of operations, (2) centralization of managerial and administrative control, (3) geographic proximity, (4) similarity of working conditions, skill, and functions, (5) common control over labor relations, (6) collective bargaining history, and (7) interchangeability of employees. *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163 (3d Cir. 1986); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). No one of the above factors has controlling weight and there are no *per se* rules to include or exclude any classification of employees in any unit. *Airco, Inc.*, *supra* at 348.

Based on the foregoing and the entire record herein, I find that the support associates in the Mid-Cal District, except the timekeepers and human resources assistants, share such a significant community of interest with the service technicians in the Mid-Cal District that they must be included in the unit with the service technicians.

customer relations representatives earn \$13 to \$14 per hour; and two audit cashiers earn around \$13 per hour.

²⁸ Service technicians, parts sales associates, shipping/receiving associates, and shuttle drivers wear uniforms supplied by the Employer. The technicians’ uniforms are slightly different than the others. Customer relations representatives, parts pros, and audit cashiers do not wear uniforms.

All of the support associates, with varying degree, have job functions that are integrated with the job functions of the service technicians. In this regard, the record shows that some of the primary job activities of the parts pros, customer relations specialists, truck stock specialists, audit cashiers, and fleet coordinators directly support the job activities of the technicians. For example, they expedite parts to technicians and have daily contact with technician, communicating information about parts and protection agreements, resolving customer complaints and inquiries regarding service calls, and auditing and resolving discrepancies in payments submitted by technicians. Parts sales associates, shuttle drivers, and shipping/receiving associates also engage in job functions that directly support the job activities of the technicians, including processing unused parts and merchandise returned by technicians and making parts and supplies available to the technicians.²⁹ The functional integration between the service technicians and support associates results in significant daily interchange and interaction between them. It is, therefore, evident that the service technicians could not do their jobs without the assistance of the support associates. The Board traditionally gives the degree of functional integration and interdependency of work responsibilities significant weight in determining the appropriateness of petitioned-for units. *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999); *Threads-Incorporated*, 191 NLRB 667 (1971).

Service technicians and support associates also share many common terms and conditions of employment due to the centralized administration of the Mid-Cal District facilities by district managers. The Mid-Cal district manager determines the budgets and the hours of operation for all of the district facilities and he is responsible for approving all discharges in the district. District managers oversee all employee recruitment, hiring, and new employee orientation. They are also involved in all disciplinary, layoff, and evaluation decisions, as well as setting the wage rates for all district employees. Therefore, all district employees receive the same employee handbook and new employee orientation packet and they are generally subject to the same policies and procedures, including the same attendance and disciplinary policies. In addition, the human resources office handles all personnel matters arising in the district and copies of all personnel files are kept in this office.³⁰

Technicians and support associates also share a common supervisory hierarchy with all the on-site technician managers and branch sales managers reporting to district managers who report directly to Orsey Hendrix, the Mid-Cal District manager. At some district facilities, technician managers and sales managers share supervisory responsibility over the service technicians and support associates. For example, at the Bakersfield, Santa Maria and San Luis Obispo facilities, the technician manager or branch sales manager is responsible for all the employees in the particular branch office whenever the other manager is away from the facility.

²⁹ In addition, support associates are cross-trained to perform the job functions of other support associates and some of these additional duties assist service technicians to perform their duties. For example, whenever parts sales associates assist shipping/receiving associates and/or customer relation specialists, they participate in providing parts and supplies to technicians or in relaying messages to technicians regarding customer inquiries.

³⁰ All Mid-Cal District employees receive the same health care benefits, disability and survivor benefits, stock purchase plan, work and family benefits, and retirement benefits.

There are, however, some significant differences in the District employees' conditions of employment. Technicians generally earn higher wage rates than the support associates, they possess different job skill, receive different on-the-job training, and they generally work at customers' homes. The importance of these differences is diminished by the fact that support associates are eligible to transfer to the technician position and that there is no job requirement that prospective technicians have any prior technician experience or technical knowledge. The record also disclosed that support associates have transferred to technician positions and technicians have likewise transferred to support associate positions. Even though technicians primarily work at customers' homes, they are required to go to the branch offices to perform in-shop repairs, pick up parts and supplies, return unused parts and merchandise, dispose of trash, attend employee meetings, and talk to the technician manager. More importantly, in spite of the distances between the branch offices, technicians and support associates are in constant contact with each other through the use of HHTs and cellular telephones.

In view of the similarity of working conditions and the significant functional integration between service technicians and support associates, I find that the differences that exist between their rates of pay, skill and training, and usual worksite are insufficient, on balance, to find that a unit of only service technicians in the Mid-Cal District to be appropriate.

In view of the foregoing, I need not rule on the Joint Petitioner's contention that most of the branch offices constitute single store units that are presumptively appropriate and, therefore, the Employer's proposed multi-facility unit is inappropriate. This contention is inconsistent with the petitioned-for unit. Thus, I note that Joint Petitioner seeks to represent a unit consisting of all service technicians in the Mid-Cal District which arguably embraces a multi-facility unit. Thus, the single-facility presumption asserted by Joint Petitioner is not applicable. See, *NLRB v. Carson Cable TV*, 795 F.2d 879, 886 (1986).³¹

Timekeepers/Human Resources Assistants

Contrary to the other support associates, I find that the timekeepers and human resources assistants do not share a community of interests with the service technicians or the other support associates and should, therefore, be excluded from the unit found appropriate. Among other things, their duties relate exclusively to personnel matters and they have no role in the Mid-Cal District product service functions, i.e., the sale of parts

³¹ In addition, Joint Petitioner's assertion of the single-facility presumption is based on incorrect facts. In this regard, the Joint Petitioner contends that the Employer's proposed unit is inappropriate because, among other things, six of the branch facilities are freestanding "stores" staffed exclusively by parts sales associates. These factual representations are erroneous because, among other things: (1) only one facility (the Santa Maria facility) is freestanding and staffed exclusively by parts sales associates, yet, it is one of the facilities that is supervised by a sales manager and a technician manager; (2) none of the branch facilities are exclusively dedicated to sales since they all include an area for customers to return merchandise for repair; and (3) all of the branch facilities are used by service technicians for a variety of reasons.

and the repair of merchandise. Their only contact with other employees relates exclusively to human resources issues and not to technical or other job related functions. It is evident, therefore, that they do not even minimally engage in assisting the unit employees or working alongside them. In addition, the human resources assistants and bookkeepers are directly supervised by the human resources manager while the other support associates and technicians are directly supervised by various lower level branch managers and technician managers. In these circumstances, I conclude that the timekeepers and human resources assistants are office clerical employees and do not share a community of interests with the employees included in the unit. *Cook Composites and Polymers Co.*, 313 NLRB 1105, 1109 (1994).³²

In summary, and based on the foregoing, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians, A&E technicians, and support associates, including truck stock specialists, fleet coordinators, parts pros, customer relations support specialists, audit cashiers, shipper/receivers, shuttle drivers, and parts sales associates employed by the Employer in its Mid-Cal Metro District; excluding all other employees, office clerical employees, timekeepers, human resources assistants, guards, and supervisors as defined in the Act.³³

There are approximately 429 employees in the unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.³⁴

³² In its brief, Joint Petitioner contends that the timekeepers and human resources assistant are also confidential employees. Under Board policy "confidential employees" are excluded from the bargaining unit. *Ladish Co.*, 178 NLRB 90 (1969). They are defined as employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations, or regularly substitute for employees having such duties. These considerations are to be "assessed in the conjunctive." *Weyerhaeuser Co.*, 173 NLRB 1170 (1969). There is nothing in the record establishing that the human resources manager formulates or determines management policies with regarding labor relations. I, therefore, conclude that the timekeepers and human resources assistants are not confidential employees.

³³ As I have found the appropriate unit herein is wider than the unit sought, and inasmuch as the record is silent regarding whether the Joint Petitioner is willing to proceed to an election in the wider unit, the Joint Petitioner is directed to advise the undersigned by close of business December 23, 2002, whether, based on its current sufficient showing of interest, it wishes to proceed to an election herein. Failing to indicate, by the above date, a willingness to proceed to an election in the appropriate unit, the petition will be dismissed.

³⁴ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by, MACHINISTS DISTRICT LODGE NO. 190 OF NORTHERN CALIFORNIA, MACHINISTS DISTRICT LODGE NO. 93, AND MACHINISTS AND MECHANICS LODGE NO. 653.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care 359 Facility, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Ronald V. Dellums Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before, December 26, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 2, 2003.

Dated at Oakland, California this 18th day of December, 2002

Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
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